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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,579	12/04/2000	Philip A. Moore JR.	07037.0010	4472

23859            7590            04/18/2002  
NEEDLE & ROSENBERG P C  
127 PEACHTREE STREET N E  
ATLANTA, GA 30303-1811

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 04/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 3/12/01

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

Claim(s) 1-27 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-27 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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Receipt is acknowledged of Drawings and IDS, each of 3/20/01.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11, 14-17, 20-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unstated what the effective treatment amount is effective for absent specific claimed range of treatment, one in the art would not know when treatment was effected. "Reduction" is relative—how much reduced? Statistically significant amount? Or? Abbreviations should be spelled out at first occurrence in claims (PM-10n).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6346240. Although the conflicting claims are not identical, they are not patentably distinct from each other because In essence, the patent claims cover solids treatment of the instant methods.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-14, 16, 18-23, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox et al 5589164.

See Example II—solid manure (Brown, dirt like sewage) was treated with aluminum chlorohydrate @ 6%. See results, col. 29. Flocculation is shown at col. 30, line 17. suitable agricultural use followed, thus, reduced runoff, P, N, acid rain, and anything else attributable inherently to the treatment of manure with the same

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composition at the same rate. Weight gain and feed efficiency would be increased, as enhanced fertilization and nutrients content of the field applied sludge would result in enhanced crop nutritive value. Processing time is shown as reduced; thus cost is reduced of energy use. Example IV particularly address animal manure. Poultry waste is envisioned (col. 12, line 7) for treatment. The pH range of treated manure is as instantly claimed (col. 23, line 41-48).

Claims 1-23, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox 5589164.

Residues of Al nitrate are evident (col. 13, lines 9-13) al cl in presence of n sources would so result in these residues (col. 20, top)—see above rejections.

Claims 1-5, 8-14, 16, 18-22, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushee et al 7/1999.

Aluminum chloride hexahydrate (p. 4) was used in compositions to treat swine manure, inclusive of contacting solids. Conclusions show reduced volatile ammonia, pH of 4.9-5.4 (top, p. 7), reduced odor producing volatile (methane), H<sub>2</sub>S, such reductions mitigate against known negative effects of ammonia, thus; increased weight gain, reduced mortality, increased feed intake, improved health, improved atmospheric conditions, protection from acid rain. (p. 2, 3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv  
March 28, 2002



NEIL S. LEVY  
PRIMARY EXAMINER